

IC 8-10

ARTICLE 10. PORTS

IC 8-10-1

Chapter 1. Indiana Port Commission—Organization

IC 8-10-1-1

Construction of ports and economic development projects authorized

Sec. 1. In order to promote the agricultural, industrial and commercial development of the state, and to provide for the general welfare by the construction and operation, in cooperation with the federal government, or otherwise, of a modern port system with terminal facilities to accommodate water, rail, truck, air-borne, and other forms of transportation, the Indiana Port Commission is hereby authorized and empowered to construct, maintain and operate, in cooperation with the federal government, or otherwise, at such locations as shall be approved by the governor, projects, including without limitation public ports with terminal facilities and traffic exchange points throughout Indiana for all forms of transportation, giving particular attention to the benefits which may accrue to the state and its citizens from all forms of transportation, and to issue revenue bonds of the state payable solely from revenues, to pay the cost of such projects. The commission's powers are not limited to ports and may be exercised throughout Indiana for projects that enhance, foster, aid, provide, or promote economic development, public-private partnerships, and other industrial, commercial, business, and transportation purposes.

(Formerly: Acts 1961, c.11, s.1; Acts 1963, c.395, s.1; Acts 1965, c.224, s.1; Acts 1969, c.387, s.1; Acts 1971, P.L.88, SEC.1.) As amended by P.L.224-2003, SEC.201 and P.L.271-2003, SEC.1.

IC 8-10-1-2

Definitions

Sec. 2. As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "commission" shall mean the Indiana Port Commission created by section 3 of this chapter, or, if said commission shall be abolished, the board, body or commission succeeding to the principal functions thereof, or to whom the powers given by this chapter to the commission shall be given by law.

(b) The word "port" shall include any combination of:

(1) any place or places on Lake Michigan, the Ohio River, the Wabash River, or other water bodies, natural or artificial, in which water-borne vessels capable of carrying articles of commerce over navigable bodies of water may be loaded, unloaded or accommodated; and

(2) nonmaritime port and traffic exchange points throughout Indiana for the transfer of goods and passengers between all

modes of transportation.

(c) The word "project" shall include:

(1) any facilities, adjuncts and appurtenances necessary or useful to operate a modern port, whether or not permanently situated at the port, including:

(A) the dredging of approaches to a port; and

(B) breakwaters, inner harbors, outer harbors, channels, canals, turning basins, docks, wharves, piers, quays, slips, loading, unloading, handling and storage equipment, warehouses, refrigerating plants and equipment, elevators for the handling and storage of grain, coal and other bulk commodities, terminal buildings or facilities, railroad equipment and trackage, roadways, airplane landing fields, parking lots, garages, automotive equipment, tugs, ferries, maintenance and construction vessels, communication systems, sewers, drains, works for the treatment of sewage, garbage and wastes, and the furnishing of utility service necessary to serve the property under the jurisdiction or control of the commission, and other buildings and facilities which the commission may deem necessary for the operation of the port; and

(2) any other project located in Indiana, other than at a port, that the commission finds will enhance, foster, aid, provide, or promote economic development, public-private partnerships, and other industrial, commercial, business, and transportation purposes.

(d) The word "cost" as applied to a port or project means:

(1) the cost of construction;

(2) the cost of acquisition of all land, rights-of-way, property, rights, easements and interests, including lands under water and riparian rights acquired by the commission for construction;

(3) the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved;

(4) the cost of relocating public roads;

(5) the cost of land or easements for roads;

(6) the cost of all machinery and equipment;

(7) financing charges;

(8) interest prior to and during construction and for not exceeding two (2) years after the estimated date of completion of construction;

(9) the cost of engineering and legal expenses, plans, specifications, surveys, and estimates of cost, traffic and revenues;

(10) other expenses necessary or incident to determining the feasibility or practicability of constructing any such project;

(11) administrative expense;

(12) other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of the acquisition or construction, and the placing of the project in

operation, including the amount authorized in the resolution of the port commission providing for the issuance of port commission revenue bonds to be paid into any special funds from the proceeds of the bonds; and

(13) any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, the preparation of plans and specifications, and other engineering services, or any other cost described in this section that is incurred in connection with the acquisition or construction of a project may be regarded as part of the cost of the project and may be reimbursed out of the proceeds of port commission revenue bonds as authorized by this chapter.

(e) The word "owner" shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and other interests authorized to be acquired by this chapter.

(f) The word "revenues" shall mean all fees, tolls, rentals, gifts, grants, moneys and all other funds coming into the possession or under the control of the commission by virtue of the terms and provisions of this article, but shall not include real property or personal property other than money, nor the proceeds from the sale of bonds issued under provisions of this chapter.

(g) The word "public roads" shall include all public highways, roads, and streets in the state, whether maintained by the state, county, city, township or other political subdivision.

(Formerly: Acts 1961, c.11, s.2; Acts 1965, c.224, s.2; Acts 1969, c.387, s.2; Acts 1971, P.L.88, SEC.2.) As amended by P.L.224-2003, SEC.202 and P.L.271-2003, SEC.2.

IC 8-10-1-3

Indiana port commission; membership; term of office; official bond; compensation

Sec. 3. (a) There is hereby created a commission to be known as the "Indiana port commission" and by that name the commission may sue and be sued, and plead and be impleaded. The commission hereby created is a body both corporate and politic in the state of Indiana, and the exercise by the commission of the powers conferred by this article in the construction, operation, and maintenance of a port or project shall be deemed and held to be essential governmental functions of the state, but the commission shall not however be immune from liability by reason thereof.

(b) The commission shall consist of seven (7) members, appointed by the governor, no more than four (4) of whom shall be members of the same political party. The members shall be residents of the state, and shall have been qualified electors therein for a period of at least five (5) years next preceding their appointment. The members of the commission first appointed shall continue in office for terms expiring, in the case of two (2) members, on July 1, 1962, and in the case of three (3) members, on July 1, 1963, July 1, 1964, and July 1, 1965, and the first two (2) members appointed after January 1, 1975,

shall continue in office for terms expiring July 1, 1977, for one (1) member and July 1, 1979, for the other member, respectively, and until their respective successors shall be duly appointed and qualified. The term of any member of the commission first appointed shall be designated by the governor. The successor of each such member shall be appointed for a term of four (4) years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the commission shall be eligible for reappointment. The governor may at any time remove any member of the commission for misfeasance, nonfeasance, or malfeasance in office. The members of the commission shall, within ten (10) days after their appointment, meet and qualify by subscribing an oath to discharge honestly and faithfully the duties of their office as members of such commission. The commission shall thereafter elect one (1) of the members as chairman and another as vice-chairman, and shall appoint a secretary-treasurer who need not be a member of the commission. Four (4) members of the commission shall constitute a quorum and the affirmative vote of four (4) members shall be necessary for any official action taken by the commission. No vacancy in the membership of the commission shall impair the rights of a quorum to exercise all the rights and perform all the duties of the commission.

(c) Before the issuance of any revenue bonds under the provisions of this article:

- (1) each appointed member of the commission;
- (2) the secretary-treasurer; and
- (3) any other employee or agent of the commission authorized

by resolution of the commission to handle funds or sign checks; shall give a surety bond to the state in the penal sum of fifty thousand dollars (\$50,000). Each such surety bond must be conditioned upon the faithful performance of the individual's duties, to be executed by a surety company authorized to transact business in the state as surety and to be approved by the governor and filed in the office of the secretary of state.

(d) Each appointed member of the commission shall receive an annual salary of seven thousand five hundred dollars (\$7,500), payable in monthly instalments. However, no members of such commission as appointed hereunder shall receive any salary except a per diem as fixed and approved by the budget director until said commission is able to carry on the full operations as intended by this chapter, and the budget director, subject to the approval of the governor of the state of Indiana, shall determine when said salaries for said commission members shall commence.

(e) Each member shall be reimbursed for the member's actual expenses necessarily incurred in the performance of the member's duties.

(f) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the commission hereunder beyond the extent to which moneys

shall have been provided under the authority of this article.
(Formerly: Acts 1961, c.11, s.3; Acts 1975, P.L.84, SEC.1.) As amended by P.L.224-2003, SEC.203 and P.L.271-2003, SEC.3; P.L.235-2005, SEC.109.

IC 8-10-1-4

Bonds; payment

Sec. 4. Revenue bonds issued under the provisions of this article:

- (1) do not constitute a debt of the commission, the state, or any political subdivision of the state, or a pledge of the faith and credit of the commission, the state, or any political subdivision of the state;
- (2) are payable solely from the funds pledged for their payment as authorized in this article, unless the bonds are refunded by refunding bonds issued under the provisions of this chapter, which shall be payable solely from funds pledged for their payment as authorized in this article; and
- (3) must contain on their face a statement to the effect that the bonds, as to both principal and interest, are not an obligation of the commission, the state, or of any political subdivision of the state, but are payable solely from revenues pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under the authority of this article and nothing in this article shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of the state.

(Formerly: Acts 1961, c.11, s.4.) As amended by P.L.66-1984, SEC.1; P.L.224-2003, SEC.204 and P.L.271-2003, SEC.4; P.L.232-2005, SEC.5.

IC 8-10-1-4.5

Certain pledges by commission prohibited

Sec. 4.5. Except as specifically authorized by the general assembly, the commission may not pledge, in any form, to:

- (1) seek funding from the state in the event of any default in the payment of revenue bonds; or
- (2) specify, in any form, in an agreement related to revenue bonds that money appropriated by the general assembly may or shall be deposited in a debt service fund or reserve fund for the revenue bonds.

As added by P.L.224-2003, SEC.205 and P.L.271-2003, SEC.5.

IC 8-10-1-5

Ports and projects; cooperation with other entities; title to property

Sec. 5. (a) The Indiana port commission may:

- (1) prepare sketches, plans, and descriptive material relating to ports or projects, as in its discretion may seem feasible, to compile data and prepare literature as to the necessity or

advisability thereof, and to do other acts and things it considers necessary to promote the ports or projects and deems to be in the public interest;

(2) carry on, in its discretion, negotiations and enter into agreements and contracts with the federal government or agencies of the federal government or an authority established under IC 36-7-23 for the building and construction of public ports including terminal facilities, to be located within Indiana, on Lake Michigan, the Ohio River, the Wabash River, or in waters adjacent to Indiana;

(3) locate and acquire suitable sites for ports or projects;

(4) construct, develop, maintain, and operate the same in cooperation with the federal government, any agency of the federal government, a corporation established under IC 36-7-23, or otherwise, in such a manner and on such terms as will, in the discretion of the commission, best serve the commercial, industrial, and agricultural interests of the state;

(5) provide adequate port and terminal facilities to accommodate water, rail, truck, and airborne transportation; and

(6) provide a traffic exchange point for all forms of transportation, giving particular attention to the benefits which may accrue to the state and its citizens by the opening of the St. Lawrence Seaway and river transportation.

(b) The title to all property included in any port or project shall be taken in the name of, and shall be in, the state of Indiana.

(Formerly: Acts 1961, c.11, s.5; Acts 1963, c.395, s.2; Acts 1965, c.224, s.3; Acts 1969, c.387, s.3; Acts 1971, P.L.88, SEC.3.) As amended by P.L.346-1989(ss), SEC.5; P.L.224-2003, SEC.206 and P.L.271-2003, SEC.6.

IC 8-10-1-6 Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 8-10-1-7

Powers and duties of commission

Sec. 7. The commission is authorized and empowered to do the following:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business.

(2) To adopt an official seal which shall not be the seal of the state of Indiana.

(3) To maintain a principal office and sub-offices at such place or places within the state as it may designate.

(4) To sue and be sued, and to plead and be impleaded in its own name. However, actions at law against the commission shall be brought in the circuit court of the county in which the principal office of the commission is located or in the circuit court of the county in which the cause of action arose, if the county is located within the state. All summonses and legal notices of every kind shall be served on the commission by

leaving a copy thereof at the principal office of the commission with the person in charge thereof or with the secretary of the commission. However, no such action shall be deemed commenced until a copy of the summons and complaint, cross complaint, petition, bill, or pleading is served upon the attorney general of Indiana.

(5) To acquire, lease, construct, maintain, repair, police, and operate a port or project as provided in this chapter, and to establish rules and regulations for the use of the port or project, and other property subject to the jurisdiction and control of the commission.

(6) To issue both taxable and tax exempt revenue bonds of the state, payable solely from revenues, as herein provided, for the purpose of paying all or any part of the cost of a port or project.

(7) To acquire, lease, and operate tug boats, locomotives, and any and every kind of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, merchandise, or articles of commerce in, on, or around the port or project.

(8) To fix and revise from time to time and to collect fees, rentals, tolls, and other charges for the use of any port or project.

(9) To acquire, obtain option on, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter.

(10) To designate the location and establish, limit, and control points of ingress to and egress from a port or project.

(11) To lease to others for development or operation such portions of any port or project, on such terms and conditions as the commission shall deem advisable.

(12) To make and enter into all contracts, undertakings, and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. When the cost of any such contract for construction, or for the purchase of equipment, materials, or supplies, involves an expenditure of more than twenty-five thousand dollars (\$25,000), the commission shall make a written contract with the lowest and best bidder after advertisement for not less than two (2) consecutive weeks in a newspaper of general circulation in the county where the construction will occur and in such other publications as the commission shall determine. The notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The commission may reject any and all bids. A bond with good and

sufficient surety as shall be approved by the commission, shall be required of all contractors in an amount equal to at least fifty percent (50%) of the contract price conditioned upon the faithful performance of the contract.

(13) To construct, assemble, or otherwise build, own, lease, operate, manage, or otherwise control any project throughout Indiana for the purpose of promoting economic growth and development throughout Indiana, retaining existing employment within Indiana, and attracting new employment opportunities within Indiana.

(14) To employ an executive director or manager, consulting engineers, superintendents, and such other engineers, construction and accounting experts, attorneys, and other employees and agents as may be necessary in its judgment, and to fix their compensation, but no compensation of any employee of the commission shall exceed the compensation of the highest paid officer or employee of the state.

(15) To receive and accept from any federal agency grants for or in aid of the construction of any port or project, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made.

(16) To provide coverage for its employees under the provisions of IC 22-3-2 through IC 22-3-6, and IC 22-4.

(17) To do all acts and things necessary or proper to carry out the powers expressly granted in this article.

(18) To hold, use, administer, and expend such sum or sums as may herein or hereafter be appropriated or transferred to the commission.

(Formerly: Acts 1961, c.11, s.7; Acts 1963, c.395, s.3.) As amended by Acts 1977, P.L.108, SEC.1; P.L.18-1987, SEC.8; P.L.56-1994, SEC.1; P.L.224-2003, SEC.207 and P.L.271-2003, SEC.7.

IC 8-10-1-7.1

Code of ethics

Sec. 7.1. (a) The commission shall:

(1) adopt:

(A) rules under IC 4-22-2; or

(B) a policy;

establishing a code of ethics for its employees; or

(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor.

As added by P.L.5-1996, SEC.10.

IC 8-10-1-7.5

Public fishing areas

Sec. 7.5. The department of natural resources may establish and

maintain, within all ports created under this chapter and in operation on July 1, 1975, areas for the use of the citizens of this state, for public fishing from the shore. The commission shall cooperate fully with the department of natural resources in the implementation of this section. However, if the site of any public fishing area established under this section is subsequently leased to others for agricultural, industrial, or commercial purposes, the commission may limit or halt public fishing in that area.

(Formerly: Acts 1975, P.L.85, SEC.1.)

IC 8-10-1-8

Relocation, reconstruction, or removal of roads, railroads, or public utility facilities; damages

Sec. 8. If the commission shall find it necessary to change the location of any portion of any public road, highway, railroad, or public utility facility, it shall cause the same to be reconstructed at such location as the division of government having jurisdiction over such road, highway, railroad or public utility facility shall deem most favorable and of substantially the same type and in as good condition as the original road, highway, or railroad or public utility facility. The cost of such reconstruction, relocation, or removal and any damage incurred in changing the location of any such road, highway, railroad, or public utility facility, shall be ascertained and paid by the commission as a part of the cost of the port or project. The commission shall have authority to petition the circuit court of the county wherein is situated any public road or part thereof, affected by the location therein of any port or project, for the vacation or relocation of such road or any part thereof with the same force and effect as statutes in effect on March 2, 1961, to the inhabitants of any municipality or governmental subdivision of the state. The proceedings upon such petition, whether it be for the appointment of appraisers or otherwise, shall be the same as provided by statutes in effect on March 2, 1961, for similar proceedings upon such petitions. In addition to the foregoing powers, the commission and its authorized agents and employees, after proper notice, may enter upon any lands, waters, and premises in the state for the purpose of making surveys, soundings, drillings, and examinations as are necessary or proper for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; provided, that before entering upon the premises of any railroad, notice shall be given to the superintendent of such railroad involved at least five (5) days in advance of such entry, and provided, that no survey, sounding, drilling, and examination shall be made between the rails, or so close to a railroad track, as would render said track unusable. The commission shall make reimbursement for any actual damage resulting to such lands, waters, and premises and to private property located in, on, along, over, or under such lands, waters and premises, as a result of such activities. The state of Indiana, subject to the approval of the governor, hereby consents to

the use of lands owned by it, including lands lying under water and riparian rights, which are necessary or proper for the construction or operation of any port or project, provided adequate compensation is made for such use. The commission shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (referred to in this section as "public utility facilities") of any public utility in, on, along, over, or under any port or project. Whenever the commission shall determine that it is necessary that any such public utility facilities which are, on or after March 2, 1961, located in, on, along, over, or under any port or project should be relocated or should be removed from the port or project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the commission. However, the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the commission as a part of the cost of the port or project, excepting, however, cases in which such equipment or facilities are located within the limits of highways or public thoroughfares being constructed, reconstructed, or improved under the provisions of this chapter. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations subject, however, to the state's right of regulation under its police powers.

(Formerly: Acts 1961, c.11, s.8.) As amended by P.L.66-1984, SEC.3; P.L.224-2003, SEC.208 and P.L.271-2003, SEC.8.

IC 8-10-1-9

Rules and regulations; adoption; publication; access by public officers; violation; offense

Sec. 9. (a) The commission shall have power to adopt such by-laws, rules and regulations as it may deem advisable for the control and regulation of any port or project or traffic on any port or project, for the protection of and preservation of property under its jurisdiction and control, and for the maintenance and preservation of good order within the property under its control, and such by-laws, rules and regulations shall be published in a newspaper of general circulation in Marion County, Indiana, and in such other manner as the commission shall prescribe; however, such rules and regulations shall provide that public officers shall be afforded ready access, while in performance of their official duty, to all property under the jurisdiction or control of the commission without the payment of tolls.

(b) Such rules and regulations adopted under this section shall be adopted under IC 4-22-2.

(c) A person who violates a rule or regulation of the commission commits a Class C infraction.

(Formerly: Acts 1961, c.11, s.9.) As amended by Acts 1976, P.L.28, SEC.2; Acts 1978, P.L.2, SEC.839; Acts 1980, P.L.75, SEC.1; P.L.224-2003, SEC.209 and P.L.271-2003, SEC.9.

IC 8-10-1-10

Property acquisition, management, and disposition

Sec. 10. (a) The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, rights of way, franchises, easements, and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission and the owner thereof, and to take title thereto in the name of the state.

(b) The commission is hereby further authorized and empowered to sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes. The commission is further authorized and empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or project, or as otherwise required under the provisions of this article. However, no such sale shall be made without first obtaining the approval of the governor, and a sale may not be made at less than the appraised value established by three (3) independent appraisers appointed by the governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the governor.

(c) The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which leases cover a period of more than four (4) years shall be subject to the approval of the governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of ports, terminal facilities, and projects under the jurisdiction or control of the commission. In the event the commission shall lease to others a building or structure financed by the issuance of revenue bonds under IC 8-10-4, the transaction must be structured as a self-liquidating or nonrecourse project (as defined in IC 8-10-4-1).

(d) No tenant, lessee, licensee, owner of real estate located within a port or project, or other person or entity has any right, claim, title, or interest in any real estate, personal property, or common property owned by the commission, a port, a project, or the state, unless a written agreement entered into by the commission expressly provides:

- (1) the exact nature and extent of the right, claim, title, or interest;
- (2) all the conditions under which the right, claim, title, or interest is granted; and
- (3) a legal or complete description of the specific property.

(Formerly: Acts 1961, c.11, s.10; Acts 1972, P.L.66, SEC.1.) As amended by P.L.224-2003, SEC.210 and P.L.271-2003, SEC.10; P.L.232-2005, SEC.6.

IC 8-10-1-11

Eminent domain; taking or disturbing property or facilities of public utility or common carrier

Sec. 11. The commission is hereby authorized and empowered to acquire by appropriation, under the provisions of the eminent domain law of the state, any land, including lands under water and riparian rights, property, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any port or project. The commission shall also be empowered to exercise such powers of eminent domain as may be conferred upon the commission by an act of Congress of the United States now in force, or which may hereafter be enacted. Title to the property condemned shall be taken in the name of the state of Indiana. Nothing herein shall authorize the commission to take or disturb property or facilities constituting all or part of any presently existing or operating public port and nothing herein shall authorize the commission to take or disturb property or facilities belonging to any public utility or to a common carrier engaged in interstate commerce, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the commission excepting however, cases in which such equipment or facilities are located within the limits of existing highways or public thoroughfares.

(Formerly: Acts 1961, c.11, s.11.) As amended by P.L.224-2003, SEC.211 and P.L.271-2003, SEC.11.

IC 8-10-1-12

Indiana port fund; creation and administration

Sec. 12. (a) A special and distinct revolving fund is hereby created, to be known as the Indiana port fund. Expenditures from said fund shall be made only for the following:

- (1) Acquisition of land including lands under water and riparian rights, or options for the purchase of such land for a port or

project site, and incidental expenses incurred in connection with such acquisition.

(2) Studies in connection with the port or project.

(3) Studies in connection with transportation by water, intermodal transportation, and other modes of transportation.

(4) Transfers to the fund established by IC 14-13-2-19 to carry out the purposes of IC 14-13-2.

(5) Administrative expenses of the commission.

The fund shall be held in the name of the Indiana port commission, shall be administered by the commission, and all expenditures therefrom shall be made by the commission, subject, however, to the approval by governor and the state budget committee of all expenditures of moneys advanced to said fund by the state of Indiana. Requests for such approval shall be made in such form as shall be prescribed by the budget committee, but expenditures for acquisition of land including lands under water and riparian rights, or options for the purchase of such land, shall be specifically requested and approved as to the land to be acquired and the amount to be expended. No transfers from said fund to any other fund of the state shall be made except pursuant to legislative action. All unexpended funds appropriated to the Indiana board of public harbors and terminals by Acts 1957, c.286, s.6, are hereby transferred to and made a part of the Indiana port fund created by this section, and shall be expended for the purpose and in the manner provided by this chapter, subject only to the restrictions contained in this chapter and no others. However, not to exceed one hundred thousand dollars (\$100,000) shall be expended for any purpose other than the acquisition of land, including lands under water and riparian rights, or options for the purchase of such land for a port or project site, and incidental expenses incurred in connection with such acquisition.

(b) Upon the sale of revenue bonds for any port or project, the funds expended from the Indiana port fund in connection with the development of such port or project and any obligation or expense incurred by the commission for surveys, preparation of plans and specifications, and other engineering or other services in connection with development of such port or project shall be reimbursed to the state general fund from the proceeds of such bonds.

(Formerly: Acts 1961, c.11, s.12.) As amended by P.L.66-1984, SEC.4; P.L.165-2003, SEC.1; P.L.224-2003, SEC.212 and P.L.271-2003, SEC.12; P.L.97-2004, SEC.36.

IC 8-10-1-13

Revenue bonds; terms and form; negotiability; governor approval required

Sec. 13. (a) Subject to the approval of the governor, the commission is hereby authorized to provide by resolution, at one (1) time or from time to time, for the issuance of revenue bonds of the state for the purpose of paying all or any part of the cost of a port or project under this chapter or IC 8-10-4. The principal of and the interest on such bonds shall be payable solely from the revenues

specifically pledged to the payment thereof. The bonds of each issue shall be dated, shall bear interest at any rate, shall mature at such time or times not exceeding thirty-five (35) years from the date thereof, as may be determined by the commission, and may be made redeemable before maturity, at the option of the commission, at such price or prices and under such terms and conditions as may be fixed by the commission in the authorizing resolution.

(b) The commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or without the state.

(c) The bonds shall be signed in the name of the commission, by its chairman or vice chairman or by the facsimile signature of such chairman or vice chairman, and the official seal of the commission, or facsimile thereof, shall be affixed thereto and attested by the secretary-treasurer of the commission, and any coupons attached thereto shall bear the facsimile signature of the chairman of the commission. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery.

(d) All bonds issued under this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state of Indiana.

(e) The bonds may be issued in coupon or in registered form, or both, as the commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest.

(f) The bonds shall be sold at public sale in accordance with IC 4-1-5, except as provided in IC 8-10-4.

(g) No action to contest the validity of any bonds issued by the commission under this article shall be commenced more than thirty (30) days following the adoption of the resolution approving the bonds as provided in this article.

(h) The commission shall cooperate with and use the assistance of the Indiana finance authority established under IC 4-4-11 in the issuance of the bonds under this chapter or IC 8-10-4.

(Formerly: Acts 1961, c.11, s.13.) As amended by Acts 1981, P.L.11, SEC.51; P.L.224-2003, SEC.213 and P.L.271-2003, SEC.13; P.L.235-2005, SEC.110.

IC 8-10-1-14

Use of proceeds of revenue bonds; replacement of lost or destroyed bonds

Sec. 14. The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the port or project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the commission may provide in the resolution authorizing the issuance of such bonds or in the trust agreement mentioned in this chapter securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from that same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost of the port or project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds and any other instruments or the security for the bonds and other instruments that are authorized by this article may be issued under the provisions of this article without obtaining the consent of any officer, department, division, commission, board, bureau, or agency of the state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this chapter.

(Formerly: Acts 1961, c.11, s.14.) As amended by P.L.66-1984, SEC.5; P.L.224-2003, SEC.214 and P.L.271-2003, SEC.14.

IC 8-10-1-15

Refunding bonds

Sec. 15. The commission is hereby authorized to provide by resolution for the issuance of refunding bonds of the state payable solely from revenues for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of section 13 of this chapter or IC 8-10-4-2, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the commission, for the additional purpose of constructing improvements, extensions, or enlargements of the port or project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof and the rights, duties and obligations of the commission in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

(Formerly: Acts 1961, c.11, s.15.) As amended by P.L.66-1984,

SEC.6; P.L.224-2003, SEC.215 and P.L.271-2003, SEC.15.

IC 8-10-1-16

Trust agreements; pledge or assignment of revenues

Sec. 16. In the discretion of the commission any bonds issued under the provisions of this act may be secured by a trust agreement by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state, except as provided in IC 8-10-4. Any resolution adopted by the commission providing for the issuance of revenue bonds and any trust agreement pursuant to which such bonds are issued may pledge or assign all or any portion of the revenues received or to be received by the commission except such part as may be necessary to pay the cost of the commission's administrative expenses, operation, maintenance and repair and to provide reserves therefor and depreciation reserves required by any bond resolution adopted or trust agreement executed by the commission, but the commission shall not convey or mortgage any port or project or any part thereof, except for self liquidating or nonrecourse projects under IC 8-10-4. In authorizing the issuance of bonds for any particular port or project, the commission may limit the amount of such bonds that may be issued as a first lien and charge against the revenues pledged to the payment of such bonds or the commission may authorize the issuance from time to time thereafter of additional bonds secured by the same lien to provide funds for the completion of the port or project on account of which the original bonds were issued, or to provide funds to pay the cost of additional projects undertaken in connection with the development of the port or project, or for both such purposes. Such additional bonds shall be issued on such terms and conditions as may be provided in the bond resolution or resolutions adopted by the commission and in the trust agreement or any agreement supplemental thereto and may be secured equally and ratably without preference, priority or distinction with the original issue of bonds or may be made junior thereto. Any pledge or assignment made by the commission pursuant hereto shall be valid and binding from the time that the pledge or assignment is made and the revenues so pledged and thereafter received by the commission shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the commission irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created or assignment made need be filed or recorded except in the records of the commission. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the commission in relation to the acquisition of property and the

construction, improvement, maintenance, repair, operation and insurance of the port or project in connection with which such bonds shall have been authorized, the rates of fees, tolls, rentals or other charges, to be collected for the use of the project, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such project. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or other funds of the commission, to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such other provisions as the commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the port or project.

(Formerly: Acts 1961, c.11, s.16.) As amended by P.L.224-2003, SEC.216 and P.L.271-2003, SEC.16; P.L.232-2005, SEC.7.

IC 8-10-1-17

Rates and charges; fixing; surplus net revenues; disposition

Sec. 17. The commission shall be authorized to fix, review, charge and collect fees, tolls, rentals, and other charges for the use of the ports, projects, terminal facilities, and lands under the jurisdiction or control of the commission or services rendered by the commission, and the aggregate thereof shall provide revenues at least sufficient to pay the cost of operation, maintenance, and repair of the port or project and terminal facilities, including the administration expenses of the commission, and in case revenue bonds are issued, sufficient to pay the interest on and principal of the bonds in accordance with their terms, and also sufficient to establish and maintain reserves created for all such purposes and for depreciation purposes. The fixing and collection of such fees, tolls, rentals and other charges and the expenditure of the revenues derived therefrom shall not be subject to the supervision or regulation by any other officer, commission, board, bureau or agency of the state. After such bonds have been fully paid and discharged and all obligations under any trust agreement securing the same have been performed or satisfied, any remaining surplus net revenues and all surplus net revenues thereafter derived from the operation of the port or project shall be paid into the state general fund.

(Formerly: Acts 1961, c.11, s.17.) As amended by P.L.224-2003, SEC.217 and P.L.271-2003, SEC.17.

IC 8-10-1-18

Disposition of revenues

Sec. 18. All money received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds, from revenues, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this chapter, but prior to the time when needed for use may be invested to the extent and in the manner provided by IC 5-13-10.5, insofar as applicable. Such funds shall be kept in depositories designated as depositories for funds of the state as selected by the commission, in the manner provided by the governing statutes in so far as applicable. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such money shall be entrusted, shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to the provisions of this chapter and of the authorizing resolution or trust agreement.

(Formerly: Acts 1961, c.11, s.18.) As amended by P.L.66-1984, SEC.7; P.L.19-1987, SEC.24; P.L.18-1996, SEC.28.

IC 8-10-1-19

Mandamus or other action compelling compliance with law

Sec. 19. Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given in this chapter may be restricted by the authorizing resolution or trust agreement, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the statutes of the state or granted under this chapter or under such trust agreement, or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by the commission or by any officer thereof, including the fixing, charging, and collecting of fees, tolls, rentals, or other charges for the use of the port or project.

(Formerly: Acts 1961, c.11, s.19.) As amended by P.L.66-1984, SEC.8; P.L.224-2003, SEC.218 and P.L.271-2003, SEC.18.

IC 8-10-1-20

Operation, policing, and maintenance of projects

Sec. 20. Each port or project, as defined in section 2 of this chapter, when constructed and placed in operation shall be maintained and kept in good condition and repair by the commission. Each such project shall also be policed and operated by such force of police, tolltakers, and other operating employees as the commission may in its discretion employ. All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this chapter.

(Formerly: Acts 1961, c.11, s.20.) As amended by P.L.66-1984, SEC.9; P.L.224-2003, SEC.219 and P.L.271-2003, SEC.19.

IC 8-10-1-21

Political subdivisions; lease, grant, or conveyance of realty to commission

Sec. 21. All counties, cities, towns, townships and other political subdivisions and all public agencies and commissions of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the commission at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, townships, other political subdivisions or public agencies and commissions of the state may deem reasonable and fair and without the necessity for an advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real or personal property owned by any such municipality or governmental subdivision which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(Formerly: Acts 1961, c.11, s.21.) As amended by P.L.224-2003, SEC.220 and P.L.271-2003, SEC.20.

IC 8-10-1-22

Audit of commission books and accounts; annual report

Sec. 22. (a) The commission shall cause an audit of its books and accounts to be made at least once each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of the commission's ports and projects. The accounts, books, and records of the Indiana port commission shall be audited annually by the state board of accounts, and the cost of such audit may be treated as a part of the cost of construction or of operations of the commission's ports and projects.

(b) The commission shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, the budget committee, and the general assembly. An annual report submitted under this section to the general assembly must be in an electronic format under IC 5-14-6. Each report shall set forth a complete operating and financial statement for the commission during the fiscal year it covers.

(Formerly: Acts 1961, c.11, s.22.) As amended by Acts 1978, P.L.6, SEC.13; P.L.224-2003, SEC.221 and P.L.271-2003, SEC.21; P.L.235-2005, SEC.111.

IC 8-10-1-23

Adverse or pecuniary interest; commission member, agent, or employee

Sec. 23. A member, agent, or employee of the commission who knowingly is interested in any contract with the commission, or in the sale of any property, either real or personal, to the commission, commits a Class A misdemeanor. All such contracts are void. This section does not apply to contracts for purchases of property, real or personal, between the commission and other departments, municipalities, or subdivisions of state government.

(Formerly: Acts 1961, c.11, s.23.) As amended by Acts 1978, P.L.2, SEC.840.

IC 8-10-1-24

Construction of law

Sec. 24. This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

(Formerly: Acts 1961, c.11, s.24.) As amended by P.L.66-1984, SEC.10.

IC 8-10-1-25

Investment in revenue bonds by financial institutions

Sec. 25. Revenue bonds issued by the commission under the provisions of this article shall constitute legal investments for any private trust funds, and the funds of any banks, trust companies, insurance companies, building and loan associations, credit unions, banks of discount and deposit, savings banks, loan and trust and safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, and industrial loan and investment companies, and any other financial institutions organized under Indiana statutes. The bonds are also made securities that may be deposited with and received by all public officers and bodies of Indiana or any agency or political subdivision of Indiana and all municipalities and public commissions for any purpose for which the deposit of bonds or other obligations of Indiana is now or may be later authorized by law.

(Formerly: Acts 1961, c.11, s.25.) As amended by P.L.66-1984, SEC.11; P.L.42-1993, SEC.7; P.L.224-2003, SEC.222 and P.L.271-2003, SEC.22.

IC 8-10-1-26

Journal of commission; public inspection

Sec. 26. All final actions of the commission shall be journalized and said journal shall be open to the inspection of the public at all reasonable times.

(Formerly: Acts 1961, c.11, s.26.)

IC 8-10-1-27

Tax exemptions

Sec. 27. (a) The exercise of the powers granted by this article will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions.

(b) As the operation and maintenance of a port or project by the commission will constitute the performance of essential governmental functions, the commission shall not be required to pay any taxes or assessments upon any port or project or any property acquired or used by the commission under the provisions of this article or upon the income therefrom. The bonds issued by the

commission, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity or proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the state of Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(c) Notwithstanding any other statute, a lessee's leasehold estate in land that is part of a port and that is owned by the state or the commission is exempt from property taxation. However, an exemption under this subsection is not available for land not located at a port.

(Formerly: Acts 1961, c.11, s.27.) As amended by P.L.66-1984, SEC.12; P.L.21-1990, SEC.39; P.L.60-1992, SEC.1; P.L.254-1997(ss), SEC.13; P.L.224-2003, SEC.223 and P.L.271-2003, SEC.23.

IC 8-10-1-28

Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 8-10-1-29

Contracts for construction or purchase over \$5,000; bidding required; emergency exception; violations a Class D felony

Sec. 29. (a) Unless the commission publicly declares an emergency, it may not during any six (6) month period make separate contracts with another party for similar construction projects or the purchase of similar equipment, materials, or supplies under IC 8-10-1-7(5) without advertising for and accepting public bids, if the aggregate cost of the separate contracts is more than twenty-five thousand dollars (\$25,000).

(b) A commission member who knowingly violates subsection (a) commits a Class D felony.

(c) A person who accepts a contract with the commission knowing that subsection (a) was violated in connection with the contract commits a Class D felony and may not be a party to or benefit from any contract with a public body in the state for two (2) years from the date of the person's conviction.

As added by Acts 1977, P.L.108, SEC.2. Amended by P.L.18-1987, SEC.9; P.L.102-1993, SEC.1.

IC 8-10-1-30

Rights of bondholders not to be impaired

Sec. 30. The state pledges and agrees with the holders of any bonds issued under this article that the state will not limit or alter the rights vested in the commission to fulfill the terms of any agreements made with the holders or in any way impair the rights or remedies of the holders until the bonds, together with the interest, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the

holders, are fully met and discharged. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

As added by P.L.224-2003, SEC.224 and P.L.271-2003, SEC.24.